

**Board of Forestry and Fire Protection
Title 14 of the California Code of Regulations**

[Notice published August 20, 1999]

NOTICE OF PROPOSED RULEMAKING

Coho Considerations, 1999

The Board of Forestry and Fire Protection (Board) proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend the following existing sections of Title 14 of the California Code of Regulations (14 CCR):

§ 895.1	Definitions
§ 897	Implementation of Act Intent
§ 898.1	Review of Plan by Director
§§ 912.9 [932.9, 952.9]	Cumulative Impacts Assessment Checklist
§§ 916 [936, 956]	Intent of Watercourse and Lake Protection
§§ 916.2 [936.2, 956.2]	Protection of the beneficial Uses of Water
§§ 916.4 [936.4, 956.4]	Watercourse and Lake Protection

PUBLIC HEARING

The Board will hold a public hearing starting at 1:00 p.m. on Wednesday, October 6, 1999, at the Sheraton Concord (Walnut Room), 45 John Glenn Drive, Concord, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code § 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 p.m. on Monday, October 4, 1999. The Board will consider only written comments received at the Board office by that time (in addition to those comments received at the public hearing). The Board requests, but does not require, that persons who submit written

comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review. All written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Dennis O. Hall
Regulations Coordinator
1416 Ninth Street
P.O. Box 944246
Sacramento, CA 94244-2460

AUTHORITY AND REFERENCE

Public Resources Code (PRC) § 4551 authorizes the Board to adopt such rules and regulations as it determines are reasonably necessary to enable it to implement, interpret, or make specific sections 4513, 4551.5, 4552, 4553, 4562.7, 4582, 4582.6, and 4582.7 of the Public Resources Code.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

The Z'berg-Nejedly Forest Practice Act of 1973 (ref. Division 4, Chapter 8 of the Public Resources Code) establishes the Legislature's concern throughout the State relating to the use, restoration, and protection of the forest resources. The Legislature further recognized that these forest resources provide watershed protection and fisheries maintenance. The Legislature declared that it is the policy of the State to encourage responsible forest management that considers the public's need for watershed protection and fisheries (ref. PRC § 4512). Furthermore, the Legislature stated its intent to create and maintain an effective and complete system of regulation for all timberlands. This system is to assure the productivity of timberlands and the goal of maximum sustained production of high quality timber products. It is also intended to give consideration to values related to watershed, wildlife, and fisheries (ref. PRC § 4513). Public Resources Code § 4551 gives the Board the authority to adopt such rules and regulations which will enable it to carry out its responsibilities to protect fish and water resources, including but not limited to streams, lakes, and estuaries.

In 1996, the State Fish and Game Commission listed Coho salmon south of San Francisco Bay as threatened under the State Endangered Species Act (ESA). Then in 1997, the National Marine Fisheries Service (NMFS) listed Coho salmon as threatened throughout its range in California under the Federal ESA, and Steelhead trout have been designated as candidate species. Additionally, the U.S. Environmental Protection Agency (USEPA) has listed several North Coast streams as water quality limited under Section 303(d) of the Federal Clean Water Act (CWA); many of the listings are for factors that can be affected by timber operations.

In March of 1998, the Resources Agency of California and the National Marine Fisheries Service (NMFS) entered into a Memorandum of Agreement (MOA). As a critical component of this MOA, the State agreed to ". . . organize an independent panel of

scientists [the Scientific Review Panel or SRP] to undertake a comprehensive review of the California Forest Practice Rules (FPRs), with regard to their adequacy for the protection of salmonid species" (*Report of the Scientific Review Panel* [SRP report], 1999). Following an extensive review of the Rules, "The SRP concluded the FPRs, including their implementation (the "THP process") do not ensure protection of anadromous salmonid populations" (*Report of the Scientific Review Panel*, 1999).

The Board of Forestry and Fire Protection recognizes the substantial concerns raised by those other agencies additionally charged with the protection of the State's valuable watershed resources. The Board is also extremely aware of the need to protect listed species that may be impacted by practices that are regulated under the Board's purview. However, the Board also realizes the time constraints that are involved in its ability to promulgate rules under the Administrative Procedures Act in order for changes to be implemented with full and meaningful participation by the public and other agencies in the rulemaking process. Considering these factors, the Board has proposed the following amendments to the Forest Practice Rules under this rulemaking package.

14 CCR § 895.1

Definitions

The California Forest Practice Rules often use definitions. These definitions are generally known by federal and state agencies, as well as those persons in the forest products industry. The proposed change in the definitions is intended to ensure that the public, as well as the reviewing agencies, understand the terms that are utilized in the proposed changes to the regulations, and also those that are currently used in the Rules. This will also keep the Rules clear.

14 CCR § 897

Implementation of Act Intent

Under this section of the current Forest Practice Rules, the RPF is responsible to provide adequate information for the Director to make an informed decision regarding a timber harvesting plan. However, the current Rules do not clearly indicate that the information provided in a plan must be sufficiently clear and detailed to allow all interested parties to adequately review the plan. The changes proposed under this section of the Rules are intended to clearly indicate the importance that clear and detailed information plays in the public's and other agencies' review of timber harvesting plans. The proposed changes are necessary to clearly indicate that the information provided must be clear and detailed enough for the public and other reviewing agencies to determine that significant adverse impacts will be avoided or reduced to insignificance.

14 CCR § 898.1

Review of Plan by Director

The current Forest Practice Rules require that the Director re-open the public comment period if there are substantial changes made to the plan after the close of the public comment period. However, those members of the public that are commonly involved in the review of timber harvesting plans have indicated that often there is significant new information added to the plan after the close of the public comment period. As a result of

the close of the public comment period, the public is excluded from commenting on this new information. The public believes that often valuable comments regarding this significant new information cannot be provided by the public to the Director and the other reviewing agencies to aid the Director in determining that no significant adverse impacts will result from the operations proposed in the plan. Additionally, the current rule language references a section of the Rules that has been relocated, and is no longer located in the section referenced.

The changes proposed in this section of the Rules are intended to allow the public to comment on any and all significant information or changes regarding the timber harvesting plan. The Rules are also intended to clarify that the Rules pertaining to substantial deviations in a timber harvesting plan have been relocated to 14 CCR § 895.1. The changes proposed under this section of the Rules are necessary to ensure that the public has an adequate opportunity to comment on all significant information and changes related to timber harvesting plans in a timely manner.

14 CCR §§ 912.9 [932.9, 952.9] **Cumulative Impacts Assessment Checklist**

The current Forest Practice Rules under this section provide a plan preparer with a guide regarding the methods to be used in preparing the cumulative impacts assessment portion of a timber harvesting plan. The Rules describe the type of information required to be provided in the cumulative impacts assessment checklist. The Rules also state what factors should be considered in evaluating the impacts that could be linked to a timber harvesting plan. However, the information provided in the Cumulative Impacts Assessment Checklist does not fully explain the extent of the assessment that must be done before a plan can be submitted to the Department. The current checklist does not require the plan submitter to provide the location of continuing, significant adverse impacts, nor does it clearly indicate that cumulative impacts must be considered when completing the checklist. Furthermore, in completing the checklist, the plan submitter is not currently required to consider that impacts must be reduced to insignificance before it can be indicated that there is no reasonable potential for significant cumulative impacts following the implementation of proposed mitigation measures. The current Rules do not require that the plan include maps of the resource areas considered in the cumulative impacts assessment. Furthermore, the current Rules do not require that the plan include a description of known, continuing, significant, environmental problems within the assessment areas. Additionally, the current Rules do not clearly indicate the extent of the appropriate sources that the plan preparer must contact in developing the cumulative impacts assessment.

In evaluating impacts to watershed resources, the current Rules do not clearly indicate that off-site cumulative effects must be considered. Furthermore, this section of the Rules does not clearly indicate that the applicable Water Quality Control Plan must be complied with. It is also not currently required that the plan preparer use the guidelines provided under the Board of Forestry's Technical Addendum No. 2 when evaluating watershed impacts.

The current Rules do not require that actual measurements be used in evaluating significant cumulative effects to resources of concern.

The changes in this section of the current Rules are intended to set the least amount of information needed to properly evaluate cumulative impacts when someone prepares a timber harvesting plan. This is intended to ensure that impacts are considered during the cumulative impacts assessment, and that enough information is provided to aid the reviewing agencies and the public in the review of the cumulative impacts evaluation provided in a timber harvesting plan prior to approval.

The changes proposed in the Rules are needed to ensure that the information provided in the Cumulative Impacts Assessment Checklist will adequately convey the extent of the assessment that has been conducted prior to the submission of a timber harvesting plan to the Department. Furthermore, the changes in the Rules are needed to ensure that impacts are reduced to insignificance before it can be indicated in the plan that there is no reasonable potential for significant cumulative impacts following the implementation of proposed mitigation measures.

The proposed changes to this section of the Rules are also necessary to ensure that all appropriate sources of information have been used in the preparing the cumulative impacts assessment, and that enough information is provided in the plan to aid in the review of the plan in regard to existing impacts within the watershed assessment area.

The proposed changes to this section of the Rules are necessary to ensure that off-site impacts are considered along with on-site impacts during the cumulative impacts evaluation. The changes are further necessary to ensure that the plan conforms to the requirements of the applicable Water Quality Control Plan. The changes are also necessary to ensure that plan preparers utilize the guidelines provided under the Board of Forestry's Technical Addendum No. 2 when evaluating watershed impacts.

The proposed changes in the Rules are necessary to allow the reviewing agencies to request that the plan preparer utilize and provide actual measurements when evaluating significant cumulative effects to resources of concern.

14 CCR §§ 916 [936, 956]

Intent of Watercourse and Lake Protection

The current Forest Practice Rules describe the Board's intent with regard to the protection of watercourses and lakes. However, the Rules may not adequately convey the Board's intent that timber harvesting plans include information regarding the evaluation of the condition of watercourses and lakes, and include information about the measures taken or planned for restoring, enhancing, and maintaining the uses of water. Furthermore, the current Rules do not fully explain the Board's intent that this information shall be provided in a way that provides an understanding of the conditions and measures for review by all involved parties.

The changes proposed in the Rules are intended to fully explain the Board's intent regarding what is provided in plans related to the protection of the uses of water. The changes are needed to ensure that all parties understand the current conditions of the watercourses and lakes near the project. The changes are also needed so that all parties understand the measures planned for the protection of the uses of water.

14 CCR §§ 916.2 [936.2, 956.2]

Protection of the Beneficial Uses of Water

The current Rules describe the factors that need to be considered in developing measures for protecting the uses of water. In addition, the Rules state how the waters of the State are classified in the Rules. This section of the Rules identifies those other sections where the basis for the classification is contained. It also identifies those other sections where the range of protective measures for each class is located.

The proposed changes to the Rules will clarify which factors should be considered in developing watercourse and lake protection. They will ensure that sensitive conditions upslope of watercourses and lakes are used to determine what protection measures should be used. They will also ensure that the measures provide for the protection of listed species. The proposed changes in the Rules are needed to ensure that the right conditions are considered in developing measures to protect the uses of water.

14 CCR §§ 916.4 [936.4, 956.4]

Watercourse and Lake Protection

The current Forest Practice Rules provide information about how an RPF is supposed to conduct a field evaluation of watercourses and lakes. The evaluation is needed to plan for the protection of the uses of water. The current Rules do not fully indicate those areas that must be evaluated by an RPF during the field examination of lakes and watercourses. Furthermore, the current Rules do not provide an ample listing of sensitive conditions that an RPF needs to identify during the examination for planning WLPZ widths and protective measures for watercourses. The current Rules do not require that the plan include information specifically describing the spawning and rearing habitat for salmonid species, nor that the width of the WLPZ and the protection measures prescribed specifically provide for the protection of spawning and rearing habitat for salmonids. Additionally, the Rules do not specify the mapping requirements pertaining to how information is provided relating to the condition of watercourses, and the location of protection measures; nor do the Rules specify adequate mapping standards for describing corrective work or specific locations of impacts. The current Rules do not specify that the person conducting the field examination must be trained in the right skills for the tasks required.

The proposed changes in the Rules are intended to ensure that all sensitive conditions related to watercourses and lakes are considered during the RPF's field examination of the waterbodies potentially affected by a plan. The proposed changes are also intended to ensure that specific information related to the protection of salmonid species is considered during the field examination, and that this information is provided in the plan in a manner sufficient for agency and public review. The changes are also intended to

ensure that the width of the WLPZ and the protection measures provided in the plan are adequate to protect spawning and rearing habitat for salmonid species. Furthermore, the proposed changes are intended to ensure that the person conducting the field examination possesses all the skills to adequately perform the tasks required to evaluate the sensitive conditions related to the protection of watercourses and lakes.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None are known.
- Costs or savings to any State agency: None are known.
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC § 17500: None are known.
- Other non-discretionary cost or savings imposed upon local agencies: None are known.
- Cost or savings in federal funding to the State: None are known.
- Significant adverse economic impact on business, including the ability of California businesses to compete with businesses in other states: The rule proposal will affect businesses and small business related to the timber industry by increasing the cost for timber harvesting. These extra costs are associated with planning, the development of cumulative impacts assessments, and the protection of watercourses, and may include but are not limited to additional planning and additional cost of professional consultations. There may also be additional cost associated with additional inspections. However, the Board staff does not anticipate that the increased costs will adversely impact the ability of businesses to compete with businesses in other states.

(Note: cost estimates for the individual rules are presented in the *Initial Statement of Reasons*.)

- Potential cost impact on private persons or directly affected businesses: As indicated above, the rule proposal will affect businesses and large and small landowners with an interest in the timber products industry by increasing the cost for timber harvesting. These extra costs are associated with planning, the development of cumulative impacts assessments, and the protection of watercourses, and may include but are not limited to additional planning and additional cost of professional consultations. There may also be additional cost associated with additional inspections.

(Note: cost estimates for the individual rules are similar to those referenced above and are presented in the *Initial Statement of Reasons*.)

- Significant effect on housing costs: None are known.
- Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- The proposed rules do not conflict with, or duplicate Federal regulations.

BUSINESS REPORTING REQUIREMENT

The Board finds that the regulations do not require a report which shall apply to businesses

PLAIN ENGLISH DETERMINATION AND OVERVIEW

Small Business Determination

The Board has determined that the proposed regulations affect small businesses.

Plain English Policy Overview

Within the last few years, the Coho salmon have been listed throughout their range as a threatened species. The steelhead trout has also been listed as a candidate species. In addition, several watersheds within the State have been listed as being limited in regard to water quality. Many of the factors that led to the listing of these species and the watersheds can be affected by timber harvesting operations.

The Z'berg-Nejedly Forest Practice Act of 1973 established the Legislature's intent to consider the public's need for long-term watershed protection, fisheries and wildlife. It directed the State Board of Forestry and Fire Protection to adopt rules to control unreasonable effects on the beneficial uses of the State's waters.

The California Forest Practice Rules use technical terms in the Rules. However, the Rules do not include a complete listing of the definitions of these terms. The definitions proposed as amendments to the Forest Practice Rules are intended to ensure that the public, as well as the reviewing agencies, understand the terms that are utilized in the proposed changes to the regulations, and also those that are currently used in the Rules. This will also keep the Rules clear.

The Board of Forestry and Fire Protection recognized that some activities associated with the harvesting of timber products can adversely impact the waters of the State and that the current intent language in the Rules may not convey its intent to ensure that the beneficial uses of water are fully protected. The proposed additions and changes to the

Rules are intended to ensure that the public, as well as the reviewing agencies understands the Board's intent regarding watercourse and lake protection.

Furthermore, the Board of Forestry and Fire Protection recognized that the current Forest Practice Rules do not adequately describe the factors that need to be considered in developing measures needed to protect the waters of the State. The Board also recognized that the information provided in a plan is not adequate for full review by the public and the reviewing agencies. Nor is there ample time for the public to comment on new information provided in a plan. The proposed additions and changes to the Rules are intended to address these limitations to the current Rules; emphasizing the need for more extensive analysis of the condition of watercourses, and the protection needed for listed fish species.

Availability of the Text in Plain English

According to Government Code section 11346.2, (a)(1) an agency that adopts a regulation that affects small businesses must draft the regulation in plain English as defined in 11342(e). The Board has attempted to draft the regulations in plain English whenever possible, and non-familiar language is defined within the regulations. However, the Board has determined that it is not feasible to fully draft the regulations in plain English due to the technical nature of the regulations. Therefore, a non-controlling plain English summary is available from the agency contact person named in the notice.

To facilitate review, and provide for meaningful public participation in the rulemaking process, the *Informative Digest/Plain English Overview* for this notice and any future notices pertaining to the rule section changes referenced in this notice shall constitute the non-controlling plain English summary of the regulation.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code § 11346.5(a)(12), the Board must determine that no alternative it considers would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Board has determined that the proposed regulations may impact businesses. However, the Board has not identified any alternatives that would lessen any adverse impact on small businesses at this time. The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing, or during the written comment period. Submissions may include the following considerations: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses, (ii) Consolidation or simplification of compliance and reporting requirements for businesses, (iii) The use of performance standards rather than prescriptive standards, or (iv) Exemption or partial exemption from regulatory requirements for businesses.

CONTACT PERSON

Questions about the proposed action, or requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, and modified text of the regulations; may be directed to:

Board of Forestry and Fire Protection
Attn: Dennis O. Hall
Regulations Coordinator
1416 Ninth Street
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-9418 or,
(916) 653-8007

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request.

A copy of the express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion, is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address. As of this date, this notice is published in the *Notice Register*.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or

- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

Dennis O. Hall
Regulations Coordinator
Board of Forestry and Fire Protection

doh: 8/5/99
File: 45 Day Notice